network. Customers who do not make any interstate calls still receive the benefit of accessing the network to receive interstate calls. The per month per number assessment reflects our finding that it is equitable for providers to contribute a fixed amount based on the ability to access and utilize a ubiquitous public network.

61. Some commenters allege that changing from the current revenue-based methodology to a new mechanism based on telephone numbers would not be equitable because it could reduce contributions from certain industry segments and increase them for others.[158] Although the change to a numbers-based contribution methodology will result in changes in the relative contribution obligations of industry segments, the new contribution methodology is not inequitable or discriminatory. The evolving nature of the telecommunications marketplace and of its participants requires the Commission periodically to review and revise the contribution methodology to ensure that providers continue to be assessed on an equitable and non-discriminatory basis. We find that, given the difficulties in continuing to assess contributions entirely on a revenue-based methodology and the benefit to consumers of access to the public network, it is equitable to adopt a numbers-based contribution methodology that assesses $0.85 per month per number.

b. Assessable Numbers

62. Below, we describe the telephone numbers for which service providers are obligated to contribute to the universal service fund. We call these Assessable Numbers. The Commission has addressed certain reporting based on telephone numbers in other contexts. In the number utilization context, the Commission requires that each telecommunications carrier that receives numbering resources from the North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or another telecommunications carrier report its numbering resources in each of six defined categories of numbers set forth in section 52.15(f) of our rules.[159] In the

[158] *See, e.g.*, FW&A *Contribution First FNPRM* Comments at 13–15; NRTA and OPASTCO *Contribution First FNPRM* Comments at 7–11; SBC *Contribution First FNPRM* Comments at 18; Verizon *Contribution First FNPRM* Reply at 6; Verizon Wireless *Contribution First FNPRM* Comments at 5–6.

[159] These six categories of numbers are defined as follows:

> (i) Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.
>
> (ii) Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.
>
> (iii) Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.
>
> (iv) Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.
>
> (v) Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers.

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regulatory fee context, the Commission used the category of "assigned numbers" as the starting point for determining how to assess fees on certain providers, but found it necessary to modify that definition to account for the different regulatory contexts. Specifically, in assessing regulatory fees for commercial mobile radio service (CMRS) providers that report number utilization to NANPA based on the reported assigned number count in their Numbering Resource Utilization and Forecast (NRUF) data, the Commission requires these providers to adjust their assigned number count to account for number porting. The Commission found that adjusting the NRUF data to account for porting was necessary for the data to be sufficiently accurate and reliable for purposes of regulatory fee assessment.[160]

63. We adopt a new term based on the category of assigned numbers to represent the numbers being assessed for universal service contribution purposes—"Assessable Numbers." The definition of Assessable Numbers that we adopt focuses on those numbers that are actually in use by end users for services that traverse a public interstate network. Specifically, we define an Assessable Number as a NANP telephone number or functional equivalent identifier[161] in a public or private network that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telecommunications network.[162] Assessable Numbers include geographic as well as non-geographic telephone numbers (such as toll-free numbers and 500-NXX numbers) so long as they meet the other criteria described in this part for Assessable Numbers.

64. The provider with the retail relationship to the end user is the entity responsible for contributing.[163] We impose the contribution obligation on the provider with the retail relationship to the end user for several reasons. First, this provider will have the most accurate and up-to-date information about how many Assessable Numbers it currently has assigned to end users. Also, this provider, and its users, are benefiting from a supported PSTN, and thus it is sound policy to require them to contribute to

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(vi) Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 days shall not be classified as reserved numbers.

47 C.F.R. § 52.15(f)

160 *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Dockets No. 05-59, 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12271, paras. 39–40 (2005).

161 "Functional equivalent identifier" means an identifier used in place of and with the same PSTN access capability as a NANP number; it is not intended to capture identifiers used in conjunction with NANP numbers, such as internal extensions that cannot be directly dialed from the PSTN. Nor is "functional equivalent identifier" intended to capture routing identifiers used for routing of Internet traffic, unless such identifiers are used in place of a NANP number to provide the ability to make or receive calls on the PSTN.

162 For purposes of the definition of Assessable Numbers, we include only the NANP telephone numbers used in the United States and its Territories and possessions.

163 *See Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 844; *see also, e.g.*, Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 7 (filed Sept. 24, 2008) (Qwest Sept. 24, 2008 *Ex Parte* Letter); AT&T and Verizon Sept. 11, 2008, *Ex Parte* Letter, Attach. 1 at 1–2; Letter from Brad E. Mutschelknaus, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket No. 04-36, Attach. at 9 (filed Oct. 3, 2008); Letter from Donna N. Lampert, Counsel for Google, to Marlene H. Dortch, Secretary, FCC (filed Oct. 3, 2008) (Google Oct. 3, 2008 *Ex Parte* Letter); *see also* 47 C.F.R. § 54.5 (defining "contributor" as "an entity required to contribute to the universal service support mechanism pursuant to § 54.706 [of the Commission's rules]").

its support.[164] We note that today, providers are permitted to pass through their contribution assessments to end users, and we understand that they typically do so.[165] Under the new methodologies, they may continue to do so, subject to the same requirement that they will not pass through more than their contribution amount.[166]

65. We also continue to define an "end user" for universal service contribution purposes as any purchaser of interstate services that is not itself a direct contributor to universal service.[167] For example, under this definition, a reseller that offers local exchange service to an end user would be assessed for that telephone number, not the incumbent LEC whose service is being resold.[168] We recognize that, in some situations, the entity with the direct relationship with the ultimate end user may not be an entity over which the Commission has exercised its mandatory or permissive authority under section 254(d). In such situations, we will treat that entity as the end user and its underlying carrier or telecommunications provider as the contributor. This approach ensures that each Assessable Number will be assessed its appropriate universal service contribution, while also ensuring that the Commission does not exceed its authority under section 254(d).[169]

66. Next, we specify whether certain types of numbers are included in the definition of Assessable Numbers. First, numbers used for intermittent or cyclical purposes are included in the definition of Assessable Numbers. Numbers used for cyclical purposes are numbers designated for use that are typically "working" or in use by the end user for regular intervals of time. These numbers include, for example, an end user's summer home telephone number that is in service for six months out of the year.[170] In the *NRO III Order*, the Commission clarified that these types of numbers should generally be categorized as "assigned" numbers if they meet certain thresholds and that, if they do not meet these thresholds, they "must be made available for use by other customers" (i.e., they are "available" numbers).[171] Because these numbers are assigned to end users, we find they should be included in the

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[164] *See supra* para. 50 (discussing the public interest in requiring these entities to support the network).

[165] *See e.g.*, AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter, Attach. 2 at 2; *see also Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24978, para. 50.

[166] 47 C.F.R. § 54.712.

[167] *See Universal Service First Report and Order*, 12 FCC Rcd at 9206-07, para. 843-44; 9179-80, para. 788; *see also* Google Oct. 3, 2008 *Ex Parte* Letter at 1.

[168] *Universal Service First Report and Order*, 12 FCC Rcd at 9206-07, paras. 843-45. For universal service contribution purposes, a "reseller" is a telecommunications carrier or telecommunications provider that incorporates purchased telecommunications services into its own telecommunications offerings. *See* FCC, INSTRUCTIONS TO THE TELECOMMUNICATIONS REPORTING WORKSHEET, FCC Form 499-A, at 11, 15 (Feb. 2008) (FCC Form 499-A Instructions), *available at* http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf.

[169] *See* 47 U.S.C. § 254(d).

[170] *See Numbering Resource Optimization*, CC Docket Nos. 99-200, 96-98, 95-116, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252, 303, para. 119 (2001) (*NRO III Order*).

[171] *NRO III Order*, 17 FCC Rcd at 304, para. 122 ("With this requirement, we seek to limit the amount of numbers that are set aside for use by a particular customer, but are not being used to provide service on a regular basis. Thus, in order to categorize such blocks of numbers as assigned numbers, carriers may have to decrease the amount [of] numbers set aside for a particular customer. We also clarify that numbers 'working' periodically for regular intervals of time, such as numbers assigned to summer homes or student residences, may be categorized as assigned numbers, to the extent that they are 'working' for a minimum of 90 days during each calendar year in which they are

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definition of Assessable Numbers we adopt today.

67. We exclude from our definition of Assessable Numbers those telephone numbers that satisfy the section 52.15 definition of "assigned numbers" solely because the "numbers [are] not yet working but hav[e] a customer service order pending" for five days or less.[172] Providers generally do not bill for services that have yet to be provisioned and therefore are not compensated for services during the pendency of the service order. Moreover, such numbers are not yet operational to send or receive calls. Thus, under the existing contribution methodology, providers would not contribute for services they are about to provide (but have not yet provided) under a pending service order. We continue to find it appropriate for contributors not to be required to contribute to the universal service fund for pending service orders.

68. We exclude from the definition of Assessable Numbers those telephone numbers that telecommunications providers have transferred or ported to a carrier using resale or the unbundled network element platform. Under prior numbering orders, such telephone numbers would still be included in the NRUF assigned number count of the transferring-out carrier.[173] Consistent with our definition of Assessable Numbers, because the underlying provider no longer maintains the retail relationship with the end user, the provider should not include these numbers in its Assessable Number count. Conversely, the receiving provider of such transferred customers would include the associated telephone numbers in its count of Assessable Numbers.

69. We exclude from the definition of Assessable Numbers those numbers that meet the definition of an Available Number, an Administrative Number, an Aging Number, or an Intermediate Number as those terms are defined in section 52.15(f) of the Commission's rules.[174] For a particular carrier, the carrier will not have an end user associated with a number in any of these categories of numbers. For example, an intermediate number is a number that is "made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer."[175] The receiving provider will be responsible for including the number as an Assessable Number once it provides the number to an end user.[176]

70. We exclude non-working telephone numbers from the definition of Assessable Number.

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assigned to a particular customer. Any numbers used for intermittent or cyclical purposes that do not meet these requirements may not be categorized as assigned numbers, and must be made available for use by other customers.").

[172] *See* 47 C.F.R. § 52.15(f)(iii).

[173] *NRO I Order*, 15 FCC Rcd at 7586–87, para. 18. Ported-out numbers, a subcategory of assigned numbers, are not reported to NANPA although NRUF reporting carriers are required to maintain internal records associated with these numbers for five years. *Id.* at 7592, 7601, paras. 36, 62.

[174] *See* 47 C.F.R. § 52.15(f); *see also* Qwest Sept. 24, 2008 *Ex Parte* Letter at 7 (arguing, among other things, that numbers used for administrative purposes and numbers that are not "actively" working, such as aging, unassigned, reserved numbers, and numbers donated back to the industry pool should be excluded from the contributor's base).

[175] *See* 47 C.F.R. § 52.15(f)(v).

[176] *See NRO I Order*, 15 FCC Rcd at 7587, para. 21 (2000) ("We agree with commenters who opine that [intermediate] numbers should not be categorized as *assigned* numbers because they have not been assigned to an end user. . . . We therefore conclude that numbers that are made available for use by another carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer should be categorized as *intermediate* [numbers].").

Carriers report as assigned numbers for NRUF purposes entire codes or blocks of numbers dedicated to specific end-user customers if at least fifty percent of the numbers in the code or block are working in the PSTN.[177] Consistent with our definition of Assessable Numbers, carriers should not include the non-working numbers in these blocks in their Assessable Number counts, because the non-working numbers portion of these blocks are not providing service to the end user.

71. We exclude from the definition of Assessable Number those numbers that are used merely for routing purposes in a network, so long as such numbers are always—without exception—provided without charge to the end user, are used for routing only to Assessable Numbers for which a universal service contribution has been paid, and the ratio of such routing numbers to Assessable Numbers is no greater than 1:1. For example, a NANP number used solely to route or forward calls to a residential number, office number, and/or mobile number would be excluded from our definition of Assessable Number if such routing number were provided for free, and such number routes calls only to Assessable Numbers. If, however, such routing or forwarding is provided for a fee, such as with remote call forward service or foreign exchange service, both the routing number and the end user number to which calls are routed or forwarded would be considered Assessable Numbers.

72. In addition, incumbent LECs need not include numbers assigned to wireless providers that interconnect at the end office of an incumbent LEC and have obtained numbers directly from the incumbent LEC.[178] Because the incumbent LEC does not have the retail relationship with the end user, it should not include these numbers in its Assessable Number count. The wireless carriers that have the retail relationship with the end users must include these telephone numbers in their Assessable Number count.

73. Finally, we exclude from the definition of Assessable Numbers those numbers associated with Lifeline services for the reasons described below.[179]

74. We do not restrict our definition to numbers that exclusively use the PSTN.[180] Evolution in communications technology away from the PSTN to alternative networks that may only partially (if at all) traverse the PSTN is one of the causes in the erosion of the contribution base under the current revenue-based methodology. As more service providers migrate to alternative networks that partially access the PSTN, continuing to assess universal service contributions based only on traffic that exclusively traverses the PSTN will not account for this migration; nor will it allow us to meet our principle of competitive neutrality.[181] Moreover, if a service provider connects a private network to a public network, the service

[177] *NRO III Order*, 17 FCC Rcd at 304, para. 122.

[178] When a wireless carrier interconnects at an incumbent LEC end office it is known as a Type 1 interconnection. *See Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Public Notice, 20 FCC Rcd 8616, 8632, App. B at para. 19 n.53 (2005) ("Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch.").

[179] *See infra* para. 90.

[180] The record is split over whether the definition of an assessable number should be restricted to the PSTN. AT&T and Verizon, for example, do not include such a requirement in their proposed definitions. *See* AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter, Attach. 1. Other commenters, however, argue for such a requirement. *See* Google Oct. 3, 2008 *Ex Parte* Letter at 1 (the definition of an assessable number should be "premised on a telephone number acting as a proxy for an underlying two-way PSTN connection"). As we explain herein, such a restriction is not warranted.

[181] *Universal Service First Report and Order*, 12 FCC Rcd at 9207, paras. 845–46.

provider and its customers benefit from the connection to the PSTN. Because universal service supports the PSTN and these parties connect to the PSTN, they benefit from universal service.[182] Thus, it is increasingly important that we conform our regulatory definitions to recognize this reality. Indeed, the Commission has already begun to recognize the need to create a level regulatory playing field. For example, calls to end users that utilize interconnected VoIP service are not wholly within the PSTN. Indeed, calls between two interconnected VoIP users may not touch the PSTN at all. Yet we found in 2006 that interconnected VoIP providers must contribute to the universal service fund.[183] For these reasons, we conclude that our definition must account for public or private interstate networks, regardless of the technology of the network (e.g., circuit-switched, packet-switched) or the transmission medium of the network (e.g., wireline, wireless).

75. Finally, we recognize that, by declining to adopt for contribution purposes verbatim the definition of "assigned numbers" in section 52.15(f) of our rules, which is used by carriers to file NRUF reports,[184] we may nominally increase some of the administrative burden associated with universal service contribution filings. We find, however, that any minor administrative cost increases arising from not using the pre-existing definition are outweighed by the benefits of modifying the definition to achieve sound universal service policy. For example, as stated above, the existing definition of assigned numbers would not enable us to meet our universal service contribution goal of ensuring that the provider with the retail relationship to the end user be the one responsible for contributing.[185]

76. Under our numbers-based approach, certain providers will be required to contribute to the universal service fund based on Assessable Numbers even though they are not today required to submit NRUF data. Section 52.15(f) of the Commission's rules requires only "reporting carriers" to submit NRUF data to the NANPA.[186] A "reporting carrier" is defined as a telecommunications carrier that receives numbering resources from the NANPA, the Pooling Administrator, or another telecommunications carrier.[187] In the case of numbers provided by a telecommunications carrier to a non-carrier entity, the carrier providing the numbers to such entities must report NRUF data to the NANPA for those numbers. Thus, non-carrier entities that use telephone numbers in a manner that meets our definition of Assessable Numbers do not report NRUF data yet must contribute.[188] For example, interconnected VoIP providers may use telephone numbers that meet our definition of Assessable Numbers even though these providers do not report NRUF data.[189] These non-carrier entities that use numbers in a manner that meets our definition of Assessable Number will be required to determine their Assessable Number count based on their internal records (e.g., billing system records) and will be

182 *Universal Service First Report and Order*, 12 FCC Rcd at 9184, para. 796.

183 *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7536–37, paras. 33-34.

184 *See* 47 C.F.R. § 52.15(f)(iii).

185 *See Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 844.

186 47 C.F.R. § 52.15(f).

187 47 C.F.R. § 52.15(f)(2).

188 *NRO I Order*, 15 FCC Rcd at 7587, para. 21.

189 See *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, 20 FCC Rcd 2957, 2961–62, para. 9 (2005) (*SBCIS Waiver Order*) (noting that most VoIP providers' numbering utilization data are embedded in the NRUF data of the LEC). In the *SBCIS Waiver Order*, the Commission granted SBCIS, an Internet service provider, permission to obtain numbering resources directly from the NANPA and/or Pooling Administrator, conditioned on, among other things, SBCIS reporting NRUF data. *Id.* at 2959, para. 4.

required to report such numbers to USAC.[190]

77. We are mindful that our move to a numbers-based contribution methodology may encourage entities to try to avoid their contribution obligations by developing ways to bypass the use of NANPA-issued numbers.[191] To the extent, however, these alternative methods are the functional equivalent of numbers and otherwise meet our definition of Assessable Numbers, such entities must report these functional equivalents as Assessable Numbers to the universal service fund administrator.

3. Additional Contribution Assessment Methodology for Business Services

78. Although we find that a numbers-based contribution mechanism is superior to the existing revenue-based mechanism for residential services, applying a pure numbers-based approach to business services would result in inequitable contribution obligations. Specifically, certain business services that do not utilize numbers, or that utilize them to a lesser extent, would not be contributing to the universal service fund on an equitable basis.[192] Section 254(d) of the Act requires "every carrier" that provides interstate telecommunications services to contribute to the universal service fund.[193] Thus, providers of business services, including non-numbers based services, must continue to contribute. We conclude that these services should be assessed based on their connection to the public network.

79. A number of commenters supported moving to a methodology that would assess telephone numbers for those services that are associated with a telephone number and assess based on capacity of the connection to the public switched network those services not associated with a telephone number.[194] Other commenters supported retaining a revenue-based methodology for these services.[195] As discussed

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[190] *See infra* paras. 95-101.

[191] *See* Letter from Jeanine Poltronieri, Vice President, Federal Regulatory, BellSouth D.C., Inc, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2 (filed July 6, 2005) ("If voice service is provided without using telephone numbers, but with IP address or other identifier, FCC will need to establish a 'functional equivalency' test.").

[192] Business services such as private line and special access services do not typically utilize telephone numbers in the same manner as residential services, and would not contribute equitably to the universal service fund under a numbers-based approach. *See, e.g.*, Letter from James S. Blaszak, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, at 3 (filed Oct. 9, 2002); Letter from Robert Quinn, Vice President Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, at 2 (filed Oct. 22, 2002). Moreover, unlike residential services, which usually have one telephone number assigned per access line, business services do not usually have a number of telephone numbers assigned that aligns with the number of access lines utilized.

[193] 47 U.S.C. § 254(d). Therefore, we disagree with those parties that continue to support a numbers-only based approach because we find such an approach would be inconsistent with the statutory requirement that every telecommunications carrier must contribute to the universal service fund. *See, e.g.*, Letter from James S. Blaszak, Counsel for Ad Hoc, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 05-337, 07-135, Attach. at 5 (filed Oct. 14, 2008).

[194] *See Contribution Staff Study*; *see also* Ad Hoc Telecommunications Users Committee 2003 Staff Study Reply; Letter from John Nakahata, Counsel for the Coalition for Sustainable Universal Service, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Oct. 31, 2002).

[195] *See* Letter from Melissa E. Newman, Vice President–Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 6 (filed Mar. 21, 2006) (Qwest Mar. 21, 2006 *Ex Parte* Letter); *see also* Qwest Sept. 24, 2008 *Ex Parte* Letter at 2.

above, a revenue-based contribution methodology is no longer sustainable in today's telecommunications marketplace.[196] Additionally, a connections-based contribution methodology will provide a basis for assessing services not associated with telephone numbers, and will recognize the greater utility derived by business end users from these high capacity business service offerings.[197] Further, in contrast to the revenues on which contributions are currently based, the number and capacity of connections continues to grow over time, providing a contribution base that is more stable than the current revenue-based methodology. Moreover, a connections-based mechanism can be easily applied to all business services. We, therefore, conclude that a connections-based contribution mechanism is the better option for business services.

80. We find that it is equitable and nondiscriminatory, consistent with the requirements of section 254(d) of the Act, to establish different contribution methodologies based on numbers and connections.[198] Although the statute states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service," it does not require that all contributors or all services be assessed in the same manner.[199] Under the current revenue-based mechanism, the Commission has established different contribution methodologies through the use of proxies for wireless and interconnected VoIP services.[200] As noted above, continuing to use a revenues-based contribution methodology has become increasingly complex, and a numbers-based system would avoid many of those complexities.[201] At the same time, however, if we relied exclusively on a numbers-based contribution methodology, there are some business services—such as private line and special access—that would escape contribution requirements entirely. That result would be inconsistent with the obligation that all providers of interstate telecommunications services contribute to universal service, and would impose an unfair burden on providers that contribute on the basis of numbers.[202] We therefore conclude that adopting different contribution assessment methodologies for residential and business services will result in equitable and nondiscriminatory contribution obligations.

81. We hereby find that business access connections should be assessed based on "Assessable Connections." An Assessable Connection is defined as an interstate telecommunications service or an interstate service with a telecommunications component that connects a business end-user's physical location (e.g., premises) on a dedicated basis to the contributor's network or the PSTN. Assessable Connections up to 64 kbps will be assessed a fixed amount, set at $5.00 per dedicated connection, and Assessable Connections over 64 kbps will be assessed a flat amount, set at $35.00 per dedicated connection. This approach will ensure a specific, predictable, and sufficient funding source for the Commission's universal service mechanisms.

[196] *See supra* para. 44.

[197] Time Warner *2006 Contribution FNPRM* Comments at 2.

[198] 47 U.S.C. § 254(d).

[199] 47 U.S.C. § 254(b)(4).

[200] The proxies offer an alternative to contributions assessed on actual interstate revenues; they are intended to approximate the portion of revenues derived from the provision of interstate telecommunications services. *First Wireless Safe Harbor Order*, 13 FCC Rcd at 21258–60, paras. 13–15 (establishing safe harbors for wireless service providers); *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 14954, para. 1 (modifying the wireless safe harbors); *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7532, 7545, paras. 23, 53 (revising the wireless safe harbor and establishing a safe harbor for interconnected VoIP providers).

[201] *See supra* para. 42.

[202] 47 U.S.C. §§ 254(b)(4), (d).

82. We set the initial contribution amounts, as explained above, at $0.85 per Assessable Number, $5.00 per Assessable Connection up to 64 kbps, and $35.00 per Assessable Connection over 64 kbps. Any adjustments to these contribution amounts necessary to meet funding requirements of the universal service program shall be applied by USAC fairly to Assessable Numbers and Assessable Connections, in a manner proportional to the percentage of total contribution paid by each at the above-set amounts.

4. Wireless Prepaid Plans

83. We adopt an alternative methodology for telephone numbers assigned to handsets under a wireless prepaid plan. Certain commenters that offer prepaid wireless services argue that the Commission should adopt a discounted numbers-based assessment for these services. For example, prepaid wireless providers argue that their customers are typically low-income or low-volume consumers and, as such, should be subject to a lesser assessment.[203] Verizon and TracFone further assert that prepaid wireless providers may have difficulty administering a per-number assessment.[204] They, therefore, recommend that any new contribution methodology accommodate prepaid wireless service providers by adopting a per-number assessment that "reflects the unique characteristics of [the] service."[205] Finally, CTIA argues that the sheer number of prepaid wireless end users—over 44 million—combined with the likelihood that most of these end users would see a rise in their pass-through assessments warrants an exception.[206]

84. To accommodate the unique situation of prepaid wireless service providers, we find it appropriate to create a limited modification in contribution assessments for providers of prepaid wireless services and their end users. We agree with commenters that it is considerably more difficult for wireless prepaid providers to pass-through their contribution assessments in light of their "pay-as-you-go" service offerings.[207] Because of this significant practical issue, we will modify the numbers-based assessment for prepaid wireless providers with regard to their offering of these services. Further, we note that, just as with Lifeline customers, many prepaid wireless end users are low income consumers. For example, TracFone states that about half of its customers have incomes of $25,000 or less.[208]

85. We find that TracFone's "USF by the Minute" proposal best addresses the concerns of

[203] Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2 (filed Sept. 17, 2008) (TracFone Sept. 17, 2008 *Ex Parte* Letter); CTIA *2006 Contribution FNPRM* Comments at 6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 3–4; Letter from John M. Beahn and Malcolm Tuesley, Counsel to Virgin Mobile USA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 4–7 (filed June 12, 2006) (Virgin Mobile June 12, 2006 *Ex Parte* Letter).

[204] *See, e.g.*, Verizon Mar. 28, 2006 *Ex Parte* Letter, Attach. at 3; TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach. at 2; Virgin Mobile June 12, 2006 *Ex Parte* Letter, Attach. at 7.

[205] *See* TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach; Letter from Antoinette Bush, Counsel for Virgin Mobile, to Marlene H. Dortch, Secretary, FCC, Docket No. 96-45, Attach. at 11 (filed Mar. 18, 2005) (Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter); *see also* AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter, at 6.

[206] *See* CTIA Oct. 2, 2008 *Ex Parte* Letter at 1 (raising a concern that current proposals could harm the large number of prepaid wireless customers).

[207] *See* Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 3 (filed June 15, 2007) (TracFone June 15 *Ex Parte* Letter).

[208] TracFone June 15, 2007 *Ex Parte* Letter at 3. TracFone also asserts that an exception is warranted because it provides service to low volume end users (i.e., end users that do make a small amount of calls, measured in minutes). *Id.* However, as explained below, we decline to provide a contribution exception for low-volume users. *See infra* para. 91.

prepaid wireless providers within the context of the numbers-based contribution methodology we adopt today.[209] TracFone's proposed USF by the Minute Plan would calculate universal service contribution assessments on prepaid wireless services by dividing the per-number assessment by the number of minutes used by the average postpaid wireless customer in a month. This per-minute number would then be multiplied by the number of monthly prepaid minutes generated by the provider. This amount would be the provider's monthly universal service contribution obligation. The per-minute assessment, however, would be capped at an amount equal to the current per month contribution per Assessable Number, established as set forth above.[210] We illustrate the proposal below.

86. According to CTIA data submitted by TracFone, the average wireless postpaid customer used 826 minutes per month for the period ending December 2007.[211] A per-number assessment of, for example $0.85 would be divided by 826 minutes to calculate a per-minute assessment of $0.00102905569. The wireless prepaid provider's contribution obligation would be calculated by multiplying the per-minute assessment by the number of prepaid minutes generated for the month. If the wireless prepaid provider generated a billion prepaid minutes in a month, its contribution for that month would be $1,029,056.[212] If the prepaid provider had 10 million prepaid customers that month, the average contribution per customer would be $0.1029 and its contribution obligation would remain at $1,029,056. If, on the other hand, it had only 1 million customers, the average contribution per-customer would be $1.03, which exceeds the current per number contribution at $0.85. In this case, because the per-customer contribution amount under the calculation would exceed the per-number assessment established by the Commission, the prepaid provider's contribution obligation would be capped at $850,000, which is the per-number assessment of $0.85 multiplied by the 1 million monthly prepaid customers. Under this scenario, the average per-customer contribution for the prepaid wireless provider would be equal to a per-number contribution of $0.85 for non-prepaid wireless residential numbers.

87. We find the TracFone discount approach superior to other forms of a discount proposed by parties. For example, CTIA proposed a fifty percent discount for prepaid wireless providers.[213] The TracFone approach is based on actual wireless calling data, whereas the CTIA approach represents a more arbitrary half-off discount. Moreover, the CTIA proposal makes no allowance for the type of end user that is using the prepaid wireless service. This contrasts with the TracFone proposal, which would not provide any discount to those end users that use more than the average monthly post-paid number of minutes. As explained above, for those customers whose usage would result in more than the allowable per Assessable Number pass-through, the assessment on the provider and the pass-through would be capped at the contribution amount month per Assessable Number. Thus, high volume users would neither benefit from, nor be penalized by, the discount mechanism. Finally, we make clear that if the prepaid provider is an ETC and is providing service to qualifying Lifeline customers, the provider is exempt from

[209] AT&T and Verizon support the TracFone discount approach for prepaid wireless providers. AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 3; *see also* Letter from David L. Sieradzki, Counsel to OnStar Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (dated Oct. 28, 2008) (OnStar "strongly supports" the TracFone per-minute of use proposal for prepaid wireless services) (OnStar Oct. 28, 2008 *Ex Parte* Letter).

[210] TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach. at 4–5.

[211] *See* TracFone Sept. 17, 2008 *Ex Parte* Letter at 5. We use these data because they are the most recent publicly available data.

[212] To the extent that the prepaid wireless subscriber is a Lifeline customer for the prepaid service, the prepaid provider should exclude prepaid minutes associated with the qualifying Lifeline customer. *See infra* para. 90.

[213] CTIA Oct. 2, 2008 *Ex Parte* Letter at 5.

contribution assessments on the qualifying Lifeline customers and we prohibit the provider from assessing any universal service pass-through charges on their Lifeline customers.

88. We find that prepaid calling cards, which will be assessed on Assessable Numbers and Assessable Connections by their underlying access provider, are different from prepaid wireless providers in that these providers do not assign a telephone number to their end users. Thus, prepaid calling card providers shall be considered end users for purposes of determination of Assessable Connections and Assessable Numbers.

5. Exceptions to Contribution Obligations

89. A number of parties have asked for exceptions from the contribution obligation. We find that, in general, providing an exception or exemption to a particular provider or to a particular category of end users would complicate the administration of the numbers-based methodology we adopt today. The result would unfairly favor certain groups by reducing or eliminating their contribution obligations, while increasing the contribution obligations on providers that are not exempted from contributing. Therefore, we conclude that grant of an exemption from the contribution obligations is only warranted for those who are truly unable to bear the burden of contributing to the universal service fund—low-income consumers. As discussed below, we exempt providers from contribution assessments on their qualifying Lifeline program customers and prohibit contributors from assessing any universal service pass-through charges on their Lifeline customers. As explained below, an exception for low-income consumers is consistent with the Commission's policies underlying the low-income universal service program and targets universal service benefits to those consumers most in need of those benefits.[214]

90. We conclude that telephone numbers assigned to Lifeline customers should be excluded from the universal service contribution base and providers of Lifeline service may not pass-through contribution assessments to Lifeline customers.[215] The Lifeline program provides an opportunity for the Commission to ensure that low-income families are not denied access to telephone service. We find that an exception for Lifeline customers satisfies the high threshold necessary to justify an exception to the new numbers-based contribution methodology we adopt today. Lifeline customers are, by definition, among the poorest individuals in the country. As such, they are in the greatest need of relief from regulatory assessments. Prohibiting recovery of universal service contributions from Lifeline customers helps to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges.[216] The record, moreover, overwhelmingly supports the creation of an exception for Lifeline customers. Consumer groups, large telecommunications customers, LECs, and wireless providers all support creating an exemption for Lifeline customers, and no commenter opposes an exemption for Lifeline customers.[217] We therefore adopt an exemption to our numbers-based contribution methodology for Lifeline customers.

91. Although commenters have sought contribution exceptions for other groups of consumers or service providers, we decline to adopt any further exceptions. Some parties argue that consumers who

[214] *Alenco*, 201 F.3d at 621.

[215] *See, e.g.*, AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 4 (proposing that numbers assigned to Lifeline customers be excluded from the monthly number count for contribution purposes).

[216] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24982, para. 62.

[217] *See, e.g.*, CTIA *2006 Contribution FNPRM* Comments at 5; Consumers Union *et al. High-Cost Reform NPRMs* Reply at 58; Ad Hoc Nov. 19, 2007 *Ex Parte* Letter at 4; AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 5.

make few or no calls, i.e., low-volume users, should be exempt from the numbers-based contribution assessment mechanism.[218] As discussed above, all users of the network, even those who make few or no calls, receive a benefit by being able to receive calls, and therefore it is appropriate for these consumers to contribute to universal service.[219] Also as discussed above, to the extent low-volume consumers may see an increase in the amount of their universal service contribution pass-through fee,[220] any such increase should be slight.[221]

92. We also decline to exempt telematics providers,[222] stand-alone voice mail providers,[223] one-way service providers,[224] and two-way paging services[225] from contributing based on numbers. We disagree with commenters arguing for special treatment for these services.[226] Granting exceptions for

[218] *See, e.g.*, Consumers Union *et al. Contribution First FNPRM* Comments at 12; NASUCA *Contribution First FNPRM* Comments at 14; Keep USF Fair Mar. 27, 2006 *Ex Parte* Letter, Attach. at 1.

[219] *See supra* para. 60; *see also* Sprint *Contribution First FNPRM* Comments at 7.

[220] *But see* IDT Aug. 2, 2007 *Ex Parte* Letter at 6–7 (arguing that low-volume consumers who make no long distance calls pay about $1.40 in universal service contribution assessments).

[221] *See supra* para. 59.

[222] Telematics is a service that is provided through a transceiver, which is usually built into a vehicle but can also be a handheld device, that provides public safety information to public safety answering points (PSAPs) using global positioning satellite data to provide location information regarding accidents, airbag deployments, and other emergencies in real time. *See, e.g.*, Letter from David L Sieradzki, Counsel for OnStar, to Marlene H. Dortch, FCC, CC Docket No. 96-45, Attach. at 1 (filed Mar. 2, 2006); *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Systems*, CC Docket No. 94-102, Order, 18 FCC Rcd 21531, 21531–33, paras. 2, 8 (2003).

[223] *See* Letter from Jennifer D. Brandon, Executive Director, Community Voice Mail National, to Tom Navin, Wireline Competition Bureau, FCC, CC Docket No. 96-45 at 1 (filed May 30, 2006) (Community Voice Mail May 30, 2006 *Ex Parte* Letter) (arguing for an exemption for these services).

[224] One-way services include, but are not limited to, one-way paging, electronic facsimile (e-fax), and voice mail services. *See* j2 Global 2003 Comments at 9 (describing its offering as a free unified messaging service that uses telephone numbers to allow subscribers to receive faxes and voice mail into their personal e-mail accounts).

[225] *See, e.g.*, Letter from Matthew Brill, Counsel for USA Mobility, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (filed Oct. 24, 2008) (opposing the assessment of a numbers-based fee on paging carriers and their customers); Letter from Kenneth Hardman, representing the American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at Attach. (filed Oct. 22, 2008).

[226] *See* Letter from Ari Q. Fitzgerald, Counsel, Mercedes-Benz USA, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Apr. 12, 2006) (Mercedes-Benz Apr. 12, 2006 *Ex Parte* Letter); *see also* Letter from John E. Logan, ATX Group, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Mar. 16, 2006) (ATX Mar. 16, 2006 *Ex Parte* Letter); Letter from David M. Don, Counsel for j2 Global Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Nov. 18, 2005) (j2 Global Nov. 18, 2005 *Ex Parte* Letter); Letter from William B. Wilhelm, Jr., Counsel for Bonfire Holdings, to Tom Navin, Chief, Wireline Competition Bureau, CC Docket No. 96-45 (filed Feb. 13, 2006) (Bonfire Feb. 13, 2006 *Ex Parte* Letter); j2 Global *Contribution Second FNPRM* Comments at 2; Letter from Kenneth E. Hardman, Counsel for American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Oct. 6, 2005) (AAPC Oct. 6, 2005 *Ex Parte* Letter); Letter from Frederick M. Joyce, Counsel for USA Mobility, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1–3 (filed Mar. 22, 2006) (USA Mobility Mar. 22, 2006 *Ex Parte* Letter).

these services would provide them with an advantage over other services that are required to contribute based on telephone numbers. These services are receiving the benefit of accessing the public network and therefore assessing universal service contributions on these entities is appropriate.[227] These service providers have not shown that grant of a contribution exception is warranted.[228] Accordingly, providers of these services will be assessed the full per-number charge.

93. We also decline to adopt an exception from the numbers-based contribution mechanism for additional handsets provided through a wireless family plan. We do not agree with commenters who argue that telephone numbers assigned to the additional handsets in family wireless plans should be assessed at a reduced rate, either permanently or for a transitional period.[229] These commenters assert that assessing contributions at the full per-number rate would cause family plan customers to experience "rate shock."[230] Although family plan customers may see an increase in universal service contribution pass-through charges on their monthly bills, we are not persuaded that the fear of "rate shock" justifies special treatment. We find that each number associated with a family plan obtains the full benefits of accessing the public network, and thus it is fair to assess each number with a separate contribution obligation. We also note that wireless service is one of the fastest-growing sectors of the industry and the record does not include persuasive data showing that a move to a numbers-based contribution methodology would have a significant, detrimental impact on wireless subscribership.[231] We agree with Qwest that an exception for

[227] We similarly decline to adopt an exemption from the numbers-based contribution assessment method for services provided by alarm companies. *See* Letter from Donald J. Evans, Counsel for Corr Wireless Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 06-122, WT Docket No. 05-194, at 2 (filed Oct. 23, 2008). These services are receiving the benefit of having access to the PSTN and should therefore contribute to universal service.

[228] Telematics providers argue against imposition of a $1.00 per number per month contribution assessment on telematics numbers due to the service's critical role in advancing public safety, and because the $1.00 assessment would be prohibitively expensive. *See, e.g.*, Letter from Gary Wallace, Vice President Corporate Relations, ATX Group, Inc., to Kevin Martin, Chairman, FCC, CC Docket No. 96-45, WC Docket No. 06-122 at 1–2 (filed Oct. 28, 2008); OnStar Oct. 28, 2008 *Ex Parte* Letter at 3–4; Letter from Matthew Brill, Counsel for Toyota Motor Sales USA, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 at 1–2 (filed Oct. 24, 2008). We find, however, that treating these services differently than other residential services would not be equitable, given their use of the PSTN and the ability of telematics providers to recover the assessment from their end users. Given the public safety benefit to consumers, we find unpersuasive the telematics' providers assertions that consumers will discontinue use of the service based on an assessment of only $1.00 per number. Furthermore, we disagree with commenters who argue that telematics service should be treated as a business service, and conclude that telematics service is a residential service that should be assessed under the $1.00 per number per month residential contribution methodology. *See* OnStar Oct. 28, 2008 *Ex Parte* Letter at 2; Letter from Tamara Preiss, Legal and External Affairs, Verizon Wireless, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 at 1 (filed Oct. 29, 2008).

[229] *See e.g.*, AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter at 4; CTIA *2006 Contribution FNPRM* Comments at 5–6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 2.

[230] *E.g.*, AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 4; CTIA *2006 Contribution FNPRM* Comments at 5–6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 2–3. *But see* AAPC Oct. 9, 2008 *Ex Parte* Letter at 2.

[231] There are, as of December 2007, 249,235,715 mobile wireless subscribers, a more than 9% increase from the previous year. *See* FCC, LOCAL TELEPHONE COMPETITION: STATUS AS OF DECEMBER 31, 2007, tbl. 14 at 18 (2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf. Moreover, where a wireless provider is eligible to receive universal service support, it receives the same level of support for each handset. *See* WTA/OPASTCO/ITTA Oct. 10, 2008 *Ex Parte* Letter at 2.

additional family plan handsets would not be competitively neutral and would advantage approximately 70 million wireless family plan consumers over other service consumers.[232] Multiple wireline lines in a household are not given a discounted contribution assessment rate. We therefore decline to adopt a reduced assessment for wireless family plan numbers.

94. Some parties seek an exception to the contribution methodology we adopt today to exclude Internet-based telecommunications relay services (TRS), including video relay services (VRS) and IP Relay services.[233] We decline to adopt an exception for such providers at this time. The Commission has an open proceeding on a number of issues related to these providers, including whether certain costs to these providers related to the acquisition of ten-digit numbers by their customers should be reimbursed by the TRS fund.[234] We defer to that proceeding consideration of whether to adopt an exception to the contribution methodology we adopt today for numbers assigned to Internet-based TRS users.[235]

6. Reporting Requirements and Recordkeeping

95. Under the existing revenue-based contribution methodology, contributors report their historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on the FCC Form 499-Q and their gross-billed and actual collected end-user interstate and international revenues annually on the FCC Form 499-A.[236] Contributors are billed for their universal service contribution obligations on a monthly basis based on their quarterly projected collected revenue.[237] Actual revenues reported on the FCC Form 499-A are used to perform true-ups to the quarterly projected revenue data.[238]

96. We will develop a new and unified reporting system to accommodate our new contribution

[232] Qwest Sept. 24, 2008 *Ex Parte* Letter, Attach. at 7; Qwest May 4, 2006 *Ex Parte* Letter, Attach. at 9; *see also* CTIA Oct. 2, 2008 *Ex Parte* Letter at 1.

[233] *See* Letter from Deb MacLean, Communication Access Center for the Deaf and Hard of Hearing, *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 1–2 (filed Sept. 29, 2008) (CSDVRS Sept. 29, 2008 *Ex Parte* Letter).

[234] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11646, para. 149 (2008) ("We . . . seek comment on whether, and to what extent, the costs of acquiring numbers, including porting fees, should be passed on to the Internet-based TRS users, and not paid for by the [TRS] Fund. . . . We also seek comment on whether there are other specific costs that result from the requirements adopted in the *Order* that, mirroring voice telephone consumers, should be passed on to consumers, including, for example, E911 charges.").

[235] To the extent that Internet-based TRS users utilize a proxy number or identifier other than an assigned ten-digit number during/pending the transition to ten-digit numbering for Internet-based TRS services, we make clear that those numbers or identifiers are NOT subject to universal service contribution at this time. This treatment is necessary to ensure the smooth transition to ten-digit numbering for these services, and to prevent duplicative charges for end users of these services.

[236] *See, e.g.*, *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24969, para. 29. Filers are required to file revisions to FCC Form 499-Q within 45 calendar days of the original filing date. *See* FCC, INSTRUCTIONS TO THE TELECOMMUNICATIONS REPORTING WORKSHEET, FCC Form 499-Q, at 10 (Feb. 2008) (FCC Form 499-Q Instructions), *available at* http://www.fcc.gov/Forms/Form499-Q/499q.pdf. Filers are required to file revisions to FCC Form 499-A by March 31 of the year after the original filing date. *See* FCC Form 499-A Instructions at 11–12.

[237] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 35.

[238] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36.

methodology.[239] Contributors will report their Assessable Number and Assessable Connections counts on a monthly basis. Contributors must report as an Assessable Number any such number that is in use by an end user during any point in the relevant month. The Commission will develop an additional version of the FCC Form 499 for use in reporting Assessable Numbers and Assessable Connections.

97. Under the new contribution system we adopt today, contributors will report historical Assessable Numbers and Assessable Connections monthly. Contributors will then be invoiced and required to contribute the following month. By reporting actual, historical numbers and connections, our contribution methodology remains simple and straightforward. As explained above, a key reason to move to the modified contribution approach adopted herein is its simplicity. Indeed, several commenters propose monthly reporting of historical number counts.[240] We find that reporting Assessable Numbers and Assessable Connections on a projected collected basis would unnecessarily complicate the contribution system. Although we are mindful of the issues inherent in historical reporting,[241] we find that a one month lag between the reported Assessable Numbers and Assessable Connections and the contribution based on those data is minimal and will not unfairly disadvantage any provider, even those with a declining base.

98. We allow contributors to self-certify which telephone numbers are, consistent with this order, considered Assessable Numbers. Contributors will be subject to audit, however, and their method for distinguishing Assessable Numbers other numbers must be reasonable and supportable.

99. Each contributor must maintain the necessary internal records to justify, in response to an audit or otherwise, its reported Assessable Number and Assessable Connections counts and the data reported on the Commission's contribution forms.[242] Contributors are responsible for accurately including all Assessable Numbers in their Assessable Number counts and all Assessable Connections in their Assessable Connections component of the methodology. Failure to file the required form by the applicable deadline, or failure to file accurate information on the form, could subject a contributor to enforcement action.[243] In addition, as with the current FCC Forms 499-A and 499-Q, we will require that an officer of the filer certify to the truthfulness and accuracy of the forms submitted to the administrator.

100. To ensure that filers report correct information, we continue to require all reporting entities to maintain records and documentation to justify the information reported in these forms, and to provide such records and documentation to the Commission and to USAC upon request.[244] All universal

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[239] We decline to adopt the suggestion by AT&T and Verizon to transition the Telecommunications Relay Services Fund, local number portability cost recovery, and numbering administration to a numbers/connections-based assessment methodology. *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 6. Although these programs rely on the revenue information reported in the current FCC Form 499-A, they do not rely on many of the revenue distinctions, such as interstate and intrastate, that necessitate the change from a revenue-based assessment for the universal service fund.

[240] *See* AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 2-3; CTIA Oct. 2, 2008 *Ex Parte* Letter, Attach. at 5; USF by the Numbers Oct. 3, 2008 *Ex Parte* Letter.

[241] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24969–70, paras. 29–32.

[242] *Comprehensive Review Report and Order*, 22 FCC Rcd at 16387, para. 27.

[243] Pursuant to section 1.80 of the Commission's rules, failure to file required forms or information carries a base forfeiture amount of $3,000 per instance and is subject to adjustment criteria. *See* 47 C.F.R. § 1.80.

[244] *Comprehensive Review Report and Order*, 22 FCC Rcd at 16372, para. 27; *see also* 47 C.F.R. §§ 54.706(e), 54.711(a).

service fund contributors are required to retain their records for five years.[245] Specifically, contributors to the universal service fund must retain all documents and records that they may require to demonstrate to auditors that their contributions were made in compliance with the program rules, assuming that the audits are conducted within five years of such contribution. Contributors further must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Office of Inspector General, to USAC, and to their respective auditors. These documents and records should include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.[246]

101. Finally, we direct the Wireline Competition Bureau (Bureau), and delegate to the Bureau the authority, to develop or modify the necessary forms to ensure proper contribution reporting occurs, consistent with this order.

7. Transition to New Methodology

102. The new reporting procedures discussed above will require reporting entities to adjust their record-keeping and reporting systems in order to provide reports to USAC regarding the number of Assessable Numbers and Assessable Connections. Accordingly, we implement a 12-month transition period for the new contribution mechanisms.[247] This transition period will give contributors ample time to adjust their record-keeping and reporting systems so that they may comply with modified reporting procedures. As explained below, a 12-month transition period will also allow reporting entities to submit several reports for informational purposes before being assessed on the basis of projected Assessable Numbers and Assessable Connections.[248] We find, therefore, that a 12-month transition period balances administrative burdens on contributors with the need to implement the new contribution methodologies in a balanced and equitable manner.

103. During 2009, filers will continue reporting their interstate telecommunications revenue on a quarterly basis and USAC will continue assessing contributions to the federal universal service mechanisms based on those quarterly reports. This one-year period and, in particular, the first six months of that period, should be used by contributors to adjust their internal and reporting systems to prepare for the reporting of Assessable Numbers and Assessable Connections.

104. Beginning in July 2009, contributors will continue to report and contribute based on their quarterly reported interstate and international revenues for the last two quarters of the year, but they will also begin filing with USAC monthly reports of their Assessable Numbers and Assessable Connections.

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[245] *See Comprehensive Review Report and Order*, 22 FCC Rcd at 16372, para. 27; 47 C.F.R. § 54.706(e).

[246] *See Comprehensive Review Report and Order*, 22 FCC Rcd at 16387, paras. 27–28. We note that contributors who also report NRUF data to the NANPA are currently required to maintain internal records of their numbering resources for audit purposes. *NRO I Order*, 15 FCC Rcd at 7601, para. 62.

[247] *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 3 (proposing a 12-month transition to the new mechanism taking effect).

[248] *See* CTIA *2006 Contribution FNPRM* Comments at 7; *see also* Verizon and AT&T Sept. 11, 2008 *Ex Parte* Letter, Attach. at 2 (advocating a 12-month implementation period followed by a 6-month transition period). Some parties advocated for a transition period as short as possible. *See, e.g.*, Letter from Gregory J. Vogt, Counsel for CenturyTel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, Attach. at 2 (filed Sept. 19 2008) (CenturyTel Sept. 19, 2008 *Ex Parte* Letter); Sprint Nextel June 14, 2006 *Ex Parte* Letter. Others advocated for a longer transition period. *See, e.g.*, Qwest Mar. 21, 2006 *Ex Parte* Letter, Attach. at 3 (advocating 18 months); XO Communications Oct. 3, 2008 *Ex Parte* Letter, Attach. at 11 (advocating at least 18 months).

USAC will thus collect data under the old revenue-based methodology, while collecting and reviewing data under the new Assessable Number and Assessable Connections methodologies for the last six months of 2009. We find that this six-month period of double-reporting is necessary to help reporting entities, Commission staff, and USAC identify implementation issues that may arise under this new methodology prior to it taking effect.[249] Although only the December 2009 Assessable Numbers and Assessable Connections will be used to compute contributors' January 2010 assessments, we find it is reasonable to require contributors to begin filing under the new methodologies prior to these periods to ensure that there is adequate time for all affected parties to address any implementation issues that may arise. Moreover, we conclude that the short overlap of reporting under both the old and new methodologies will not be unduly burdensome for contributors given the limited duration of the dual reporting.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

105. Pursuant to the Regulatory Flexibility Act (RFA),[250] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the report and order concerning the possible significant economic impact on small entities by the policies and actions considered in the report and order. The text of the FRFA is included in Appendix [__].

B. Paperwork Reduction Act

106. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,[251] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

C. Accessible Formats

107. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

D. Congressional Review Act

108. The Commission will include a copy of this report and order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

[249] *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 3 (recommending a six-month transition period for filers and USAC to test and calibrate the new system prior to its taking effect).

[250] *See* 5 U.S.C. § 603. The RFA, *see* U.S.C. §601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (Small Business Act).

[251] *See* 44 U.S.C. § 3506(c)(4).

109. Accordingly, IT IS ORDERED that, pursuant to sections 1–4, 201–209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, and sections 601 and 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151–154, 157 nt, 201–209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503, 601 and 706, and sections 1.1, 1.411–1.429, and 1.1200–1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411–1.429, 1.1200–1.1216, the REPORT AND ORDER IS ADOPTED.

110. IT IS FURTHER ORDERED that Parts [__] of the Commission's rules, 47 C.F.R. § [__] are AMENDED as set forth in Appendix A hereto.

111. IT IS FURTHER ORDERED that this report and order shall become effective 30 days after publication of the text of a summary thereof in the Federal Register, pursuant to 47 C.F.R. §§ 1.4, 1.13, except for the information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date(s).

112. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this report and order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX C

Alternative Proposal

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36
Numbering Resource Optimization	)	CC Docket No. 99-200

ORDER ON REMAND AND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: "Insert Adopted Date" **Released: "Insert Release Date"**

Comment Date: [XX days after date of publication in the Federal Register]
Reply Comment Date: [XX days after date of publication in the Federal Register]

By the Commission:

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Heading Paragraph #

I. INTRODUCTION

1. In enacting the Telecommunications Act of 1996 (1996 Act),[1] Congress sought to introduce competition into local telephone service, which traditionally was provided through regulated monopolies. Recognizing that in introducing such competition, it was threatening the implicit subsidy system that had traditionally supported universal service, it directed the Commission to reform its universal service program to make support explicit and sustainable in the face of developing competition.

2. For the most part, Congress's vision has been realized. Competition in local telephone markets has thrived. At the same time, the communications landscape has undergone many fundamental changes that were scarcely anticipated when the 1996 Act was adopted. The Internet was only briefly mentioned in the 1996 Act,[2] but now has come into widespread use, with broadband Internet access service increasingly viewed as a necessity. Consistent with this trend, carriers are converting from circuit-switched networks to Internet Protocol (IP)-based networks. These changes have benefited consumers and should be encouraged. Competition has resulted in dramatically lower prices for telephone service, and the introduction of innovative broadband products and services has fundamentally changed the way we communicate, work, and obtain our education, news, and entertainment. At the same time, however, these developments have challenged the outdated regulatory assumptions underlying our universal service and intercarrier compensation regimes, forcing us to reassess our existing approaches. We have seen unprecedented growth in the universal service fund, driven in significant part by increased

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

[2] *See* 47 U.S.C. § 230; 47 U.S.C. § 157 nt.

support for competitive eligible telecommunications carriers (ETCs). The growth of competition also has eroded the universal service contribution base as the prices for interstate and international services have dropped. Finally, we have seen numerous competitors exploit arbitrage opportunities created by a patchwork of above-cost intercarrier compensation rates. Although the Commission has attempted to address many of these issues on a case-by-case basis, it has become increasingly clear that piecemeal efforts to respond to these developments are inadequate—only comprehensive reform can address the fundamental challenges that they present.[3]

3. Today we adopt a comprehensive approach to addressing these difficult, but critical issues. First, we spur widespread deployment of broadband by ensuring that carriers receiving universal service high-cost support offer broadband throughout their service areas. Second, we help Lifeline/Link Up customers participate in this new broadband world by creating a pilot program to provide discounted access to broadband services. Third, we broaden and stabilize our universal service contribution base through equitable and non-discriminatory contributions. Fourth, having placed our universal service fund on solid footing, we now take the long-overdue step of moving toward uniform intercarrier compensation rates that provide efficient incentives for the investment in and use of broadband networks. Finally, our approach minimizes disruptions to carriers and safeguards universal service for consumers by adopting sensible transition plans and ensuring that universal service is used to support service in high-cost areas, not carriers' dividends.

II. REFORM OF HIGH-COST UNIVERSAL SERVICE SUPPORT

4. Today we take a monumental step toward our goal of ensuring that broadband is available to all Americans. We do this by requiring that all recipients of high-cost support offer broadband Internet access service to all customers within their supported areas as a condition of receiving future support. Taking this action will promote the deployment of broadband Internet access service to all areas of the nation, including high-cost, rural, and insular areas where customers may not currently have access to such services. In particular, as a condition of receiving continued high-cost support, we will require all incumbent local exchange carriers (LECs) to commit to offer broadband Internet access service within five years to all customers in study areas where the incumbent LECs receive high-cost support. Incumbent LECs that do not make this commitment will gradually lose their high-cost support, as this support will be awarded via reverse auction to an ETC who will meet carrier of last resort obligations and will commit to offering broadband Internet access to all customers in the entire study area within ten years. We also adopt a five year transition plan for existing high-cost support received by competitive ETCs. With these reforms, we take great strides toward ensuring that all Americans, regardless of where they live, will have broadband Internet access service available to them, without increasing the size of the high-cost fund.

A. Background

[3] We thus conclude that there is a compelling need to proceed with comprehensive reform at this time, as we describe below. *See, e.g., infra* Parts II.A, III.A, IV.A, and V.B. Given that we have notice and an extensive record, going back in some cases seven years, we are unpersuaded by commenters proposing that we delay reform to seek further comment, or that we issue a Further Notice of Proposed Rulemaking on questions beyond those raised in Part VI. *See, e.g.*, Letter from Ray Baum, Chairman, NARUC Communications Committee, to Chairman Kevin J. Martin, et al., FCC, CC Docket Nos. 01-92, 80-286, WC Docket Nos. 08-152, 04-32, 06-122, WT Docket No. 05-194 at 2 (filed Oct. 21, 2008) (NARUC Oct. 21, 2008 *Ex Parte* Letter); Letter from Jeffery S. Lanning, Embarq, to Chairman Kevin J. Martin, et al., FCC, CC Docket Nos. 01-92, 99-68, WC Docket No. 04-36 at 2 (filed Oct. 28, 2008) (Embarq Oct. 28, 2008 *Ex Parte* Letter); Letter from Eric N. Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 06-122, 07-135, 08-152 at 1 (filed October 27, 2008) (Windstream Oct. 27, 2008 *Ex Parte* Letter).

5. The 1996 Act amended the Communications Act of 1934 (the Act) with respect to the provision of universal service.[4] Congress sought to preserve and advance universal service, while at the same time opening all telecommunications markets to competition.[5] Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.[6] Among other things, section 254(b) directs that there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and access to advanced telecommunications and information services should be provided in all regions of the nation.[7]

6. The Commission implemented the universal service provisions of the 1996 Act in the 1997 *Universal Service First Report and Order*.[8] In considering methods to determine universal service support in rural, insular, and high-cost areas, the Commission examined the use of competitive bidding, and identified several advantages of competitive bidding as a method for allocating high-cost universal service support.[9] First, the Commission found that "a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area."[10] Second, "by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the amount of support needed for universal service."[11] Despite these advantages, the Commission determined that the record at the time was insufficient to support adoption of a competitive bidding mechanism.[12] Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because there likely would be no competition in a significant number of rural, insular, or high-cost areas in the near future.[13] The Commission, therefore, declined to adopt a competitive bidding mechanism at that time, but found that competitive bidding warranted further consideration as a potential mechanism for determining levels of high-cost support in the future.[14]

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[4] 47 U.S.C. § 254 (added by the 1996 Act).

[5] 47 U.S.C. § 254.

[6] *See* 47 U.S.C. § 254(b).

[7] 47 U.S.C. § 254(b)(1), (2), (5).

[8] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780–88, paras. 1–20 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[9] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320.

[10] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320 (agreeing with the Joint Board). The Commission also agreed with the Joint Board that "competitive bidding is consistent with section 254, and comports with the intent of the 1996 Act to rely on market forces and to minimize regulation." *Id.* at 8951, para. 325.

[11] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320 ("In that regard, the bidding process should also capture the efficiency gains from new technologies or improved productivity, converting them into cost savings for universal service.").

[12] *See Universal Service First Report and Order*, 12 FCC Rcd at 8949–50, paras. 322–23. Only GTE had proposed a detailed competitive bidding plan, which it characterized as an outline rather than a final proposal. *See* GTE's Comments in Response to Questions, CC Docket No. 96-45, Attach. 1 (filed Aug. 2, 1996).

[13] *See Universal Service First Report and Order*, 12 FCC Rcd at 8950, para. 324.

[14] *See Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320.

7. Pursuant to section 254(e) of the Act, an entity must be designated as an eligible telecommunications carrier (ETC) to receive high-cost universal service support.[15] ETCs may be incumbent LECs, or non-incumbent LECs, which are referred to as "competitive ETCs."[16] Under the existing high-cost support distribution mechanism, incumbent LEC ETCs receive high-cost support for their intrastate services based on their costs.[17] Competitive ETCs, on the other hand, receive support for each of their lines based on the per-line support the incumbent LEC receives in the service area.[18] This support to competitive ETCs is known as "identical support." The Commission's universal service high-cost support rules do not distinguish between primary and secondary lines; therefore, high-cost support may go to a single end user for multiple connections.[19] Further, the Commission's rules may result in multiple competitors in the same high-cost area receiving identical per-line support.

8. High-cost support for competitive ETCs has grown rapidly over the last several years, which has placed extraordinary pressure on the federal universal service fund.[20] In 2001, high-cost universal service support totaled approximately $2.6 billion.[21] By 2007, the amount of high-cost support had grown to approximately $4.3 billion per year.[22] In recent years, this growth has been due mostly to increased support provided to competitive ETCs, which pursuant to the identical support rule receive high-cost support based on the incumbent LEC's per-line support. Competitive ETC support, in the six years from 2001 through 2007, has grown from under $17 million to $1.18 billion—an annual growth rate of over

[15] 47 U.S.C. § 254(e). The statutory requirements for ETC designation are set out in section 214(e) of the Communications Act of 1934, as amended (Communications Act or Act). 47 U.S.C. § 214(e).

[16] *See* 47 C.F.R. § 54.5 ("A 'competitive eligible telecommunications carrier' is a carrier that meets the definition of 'eligible telecommunications carrier' below and does not meet the definition of an 'incumbent local exchange carrier' in § 51.5 of this chapter.").

[17] Non-rural incumbent LEC ETCs receive support for their intrastate supported services based on the forward-looking economic cost of providing the services. 47 C.F.R. § 54.309. Rural incumbent LEC ETCs receive support based on their loop costs, as compared to a national average. 47 C.F.R. Part 36, sbpt. F; 47 C.F.R. § 54.305. Incumbent LEC ETCs that serve study areas with 50,000 or fewer lines receive support based on their local switching costs. 47 C.F.R. § 54.301. Additionally, incumbent LEC ETCs that are subject to price cap or rate-of-return regulation receive interstate access support based on their revenue requirements. 47 C.F.R. Part 54, sbpts. J, K.

[18] 47 C.F.R. § 54.307(a).

[19] *See Universal Service First Report and Order*, 12 FCC Rcd at 8828–30, paras. 94–96.

[20] Support for the fund derives from assessments paid by providers of interstate telecommunications services and certain other providers of interstate telecommunications. *See* 47 C.F.R. § 54.706. Fund contributors are permitted to, and almost always do, pass those assessments though to their end-user customers. *See* 47 C.F.R. § 54.712. Fund assessments paid by contributors are determined by applying the quarterly contribution factor to the contributors' contribution base revenues. In the second quarter of 2007, the contribution factor reached 11.7%, which is the highest level since its inception. *See Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 5074, 5077 (OMD 2007). The contribution factor has since declined to 11.4% in the fourth quarter of 2008. *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 08-2091 (OMD 2008).

[21] *See* FCC, UNIVERSAL SERVICE MONITORING REPORT, tbl. 3.2 (2007) (2007 UNIVERSAL SERVICE MONITORING REPORT), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279226A1.pdf.

[22] UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, 2007 ANNUAL REPORT 43 (2007) (USAC 2007 ANNUAL REPORT), *available at* http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2007.pdf.

100 percent.[23] This "funded competition" has grown significantly in a large number of rural, insular, or high-cost areas; in some study areas, more than 20 competitive ETCs currently receive support.[24]

9. To address the growth in competitive ETC support, the Joint Board recommended an interim cap on the amount of high-cost support available to competitive ETCs, pending comprehensive high-cost universal service reform. The Commission adopted this recommendation in 2008.[25]

10. For the past several years, the Joint Board and the Commission have been exploring ways to reform the Commission's high-cost program. In the most recent high-cost support comprehensive reform efforts, the Joint Board issued a recommended decision on November 20, 2007.[26] The Joint Board recommended that the Commission address reforms to the high-cost program and make "fundamental revisions in the structure of existing Universal Service mechanisms."[27] Specifically, the Joint Board recommended that the Commission should: (1) deliver high-cost support through a provider of last resort fund, a mobility fund, and a broadband fund[28]; (2) cap the high-cost fund at $4.5 billion, the approximate level of 2007 high-cost support[29]; (3) reduce the existing funding mechanisms during a transition period[30]; (4) add broadband and mobility to the list of services eligible for support under section 254 of the Act[31]; (5) eliminate the identical support rule[32]; and (6) "explore the most appropriate auction mechanisms to determine high-cost universal service support."[33]

11. On January 29, 2008, the Commission released three notices of proposed rulemaking

[23] 2007 UNIVERSAL SERVICE MONITORING REPORT at tbl. 3.2; USAC 2007 ANNUAL REPORT at 45.

[24] *See* USAC Quarterly Administrative Filings for 2008, Fourth Quarter (4Q) Appendices, HC03—Rural Study Areas with Competition—4Q2008, *available at* http://www.usac.org/about/governance/fcc-filings/2008/Q4/HC03%20-%20Rural%20Study%20Areas%20with%20Competition%20-%204Q2008.xls (showing 24 competitive ETCs in the study area of incumbent LEC Iowa Telecom North (study area code 351167), and 22 competitive ETCs in the study area of incumbent LEC Iowa Telecom Systems (study area code 351170)).

[25] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998, 8999–9001, paras. 4–7 (JB 2007) (*Interim Cap Recommended Decision*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*). As recommended by the Joint Board, the Commission capped competitive ETC support for each state. *Interim Cap Recommended Decision*, 22 FCC Rcd at 9002, para. 9; *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 26–28. The Commission set the cap at the level of support competitive ETCs were eligible to receive during March 2008. *Interim Cap Order*, 23 FCC Rcd at 8850, para. 38.

[26] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (JB 2007) (*Comprehensive Reform Recommended Decision*).

[27] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, para. 1.

[28] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20480–81, para. 11.

[29] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 26.

[30] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 27.

[31] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20481–82, paras. 12–18.

[32] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20486, para. 35.

[33] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, paras. 1–6.

addressing proposals for comprehensive reform of high-cost universal service support.[34] In the *Identical Support NPRM*, the Commission sought comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive ETCs.[35] It tentatively concluded that the Commission should eliminate the identical support rule.[36] The Commission also tentatively concluded that support to a competitive ETC should be based on the competitive ETC's own costs of providing the supported services, and it sought comment on how the support should be calculated, the reporting obligations to be applied, and whether the Commission should cap such support at the level of the incumbent LEC's support.[37] In the *Reverse Auctions NPRM*, the Commission tentatively concluded that reverse auctions offer several potential advantages over current high-cost mechanisms and sought comment on whether they should be used as the disbursement mechanism to determine the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas, and it sought comment on how to implement reverse auctions for this purpose.[38] The Commission also sought comment on a number of specific issues regarding auctions and auction design.[39] The Commission also released the *Joint Board Comprehensive Reform NPRM*, seeking comment on the Joint Board's *Comprehensive Reform Recommended Decision* and incorporating by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM*.[40] The discussion that follows represents our response to the Joint Board's *Comprehensive Reform Recommended Decision*, pursuant to section 254(a)(2).[41]

B. Discussion

12. Today we comprehensively reform the high-cost universal service support mechanism, and take steps to ensure that broadband Internet access service is deployed quickly to all areas of the country, including rural and insular areas. The steps we take today will provide certainty to providers as to the levels of support available to them in providing supported services and broadband Internet access service to all customers within the supported areas. This will assist providers in creating business plans to deploy services in currently unserved areas and will ensure efficiency in the deployment of services to these areas. Specifically, we are defining the level of high-cost support available to providers that commit to offer broadband to all customers within a service area. For incumbent LECs, other than rural rate-of-return incumbent LECs, support in incumbent LEC service areas will be set at the total amount of high-

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[34] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively the *High-Cost Reform NPRMs*).

[35] *Identical Support NPRM*, 23 FCC Rcd at 1468, para. 1.

[36] *Identical Support NPRM*, 23 FCC Rcd at 1468, para. 1.

[37] *Identical Support NPRM*, 23 FCC Rcd at 1473–78, paras. 12–25.

[38] *Reverse Auctions NPRM*, 23 FCC Rcd at 1495, para. 1.

[39] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500–12, paras. 10–50.

[40] *Joint Board Comprehensive Reform NPRM*, 23 FCC Rcd at 1531, para. 1.

[41] 47 U.S.C. § 254(a)(2). Pursuant to that section, the Commission shall complete any proceeding to implement a Joint Board recommendation within one year after receiving it. The Commission has acted on the *Comprehensive Reform Recommended Decision* prior to the November 20, 2008 one-year statutory deadline.